



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY July 29, 1996

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

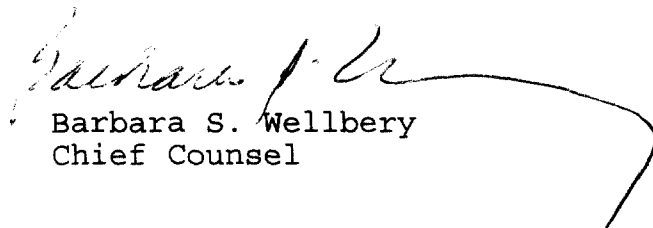
Re: Ex Parte Filing of the National Telecommunications and  
Information Administration in CC Docket No. 96-98

Dear Mr. Caton:

In accordance with Section 1.206 of the Commission's rules and regulations, enclosed please find two (2) copies of an ex parte letter that NTIA sent this day to Chairman Hundt and Commissioners Quello, Chong, and Ness. Please include these documents in the record in the above-captioned proceeding.

If you have questions, please contact me at (202) 482-1816.

Sincerely,

  
Barbara S. Wellbery  
Chief Counsel

Handwritten: 024  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554



UNITED STATES DEPARTMENT OF COMMERCE  
The Assistant Secretary for Communications  
and Information  
Washington, D.C. 20230

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FEDERAL COMMUNICATIONS COMMISSION  
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The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Implementation of the Local Competition Provisions in  
the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Chairman Hundt,

As the Commission enters the final stages of its rulemaking to implement the local competition provisions of the Telecommunications Act of 1996 (Act), the National Telecommunications and Information Administration (NTIA) would like to correct some apparent misapprehensions about our views on several of the vital issues in that rulemaking. In particular, we would like to clarify our position concerning interconnection and unbundling.

In NTIA's May 30 reply comments in the above-captioned proceeding, we noted that the Act makes negotiations among private parties (subject to oversight by State agencies) the engine that will drive the development of local telephone service competition. We pointed out, however, that the Act also charges the Commission with establishing a national framework -- a set of minimum rules and principles -- to guide private negotiations towards conclusions that further the public interest.

With respect to interconnection and unbundling, NTIA recommended that if (1) any State commission has ordered an incumbent local exchange carrier (ILEC) to provide or (2) an ILEC has voluntarily offered to provide interconnection at a particular point or to unbundle a particular network element, the Commission should create a presumption that it is technically feasible for ILECs in any other part of the country to provide that same type of interconnection or that same network element to any requesting carrier. An ILEC faced with such a request would have an opportunity to persuade the relevant State commission by clear and convincing evidence that offering the requested interconnection or network element is not technically feasible.

Given the progress that State commissions have made in promoting local competition, NTIA's approach, in practice, would require ILECs, in the absence of compelling proof of technical infeasibility, to offer a range of interconnection points and a level of network unbundling comparable to that proposed by

interexchange carriers and other potential local competitors. More importantly, NTIA's proposal would create a dynamic process that should produce increasing interconnection and unbundling obligations over time, with all of the competitive benefits that such a process is likely to generate.

With respect to pricing of interconnection and unbundled network elements, NTIA recommended that the Commission establish nationwide principles that would define a "zone of reasonableness" within which private parties can negotiate interconnection and unbundling rates. That zone should be defined at the bottom by TSLRIC. To fix an upper limit, an ILEC would have an opportunity to demonstrate by clear and convincing evidence that the TSLRIC estimate should be adjusted to include additional costs. Those costs would include expenditures that contribute to an ILEC's long run average incremental cost of the services or functionalities requested by an interconnector and which are clearly incremental to the provisioning of those services or functionalities, but are not part of the TSLRIC estimate for them. NTIA specifically stated that historical or embedded costs should not be considered in this analysis.

In the weeks since NTIA submitted our reply comments, considerable controversy has arisen over the interrelationship between the pricing of unbundled network elements and the interstate access charge regime. The dispute apparently revolves around two questions: First, must carriers originate and terminate long distance calls by acquiring service via the ILEC's existing access charge tariffs or may those carriers do so by purchasing and reassembling unbundled network elements at cost? Second, if carriers use unbundled network elements to haul long distance traffic, should they be required to pay all or some portion of current access charges, in addition to the appropriate costs of the elements alone?

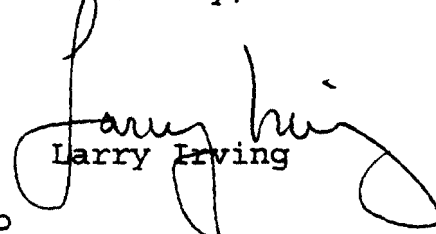
NTIA did not address either issue in our reply comments. The first question, moreover, presents an interesting legal issue on which there has been much debate. We wish to clarify for the record, however, that if the Commission decides to permit carriers to originate and terminate long distance traffic using unbundled network elements secured from ILECs, the pricing of those elements should be determined (except in the case of voluntarily negotiated agreements) in accordance with Section 252(d) of the Act, subject to the interim measures recommended below. NTIA believes that consumers will be best served by policies that allow firms to compete aggressively and head-to-head for those consumers. Accordingly, where a competing firm "wins the customer," after having purchased all the necessary network elements to do so, it should only be required to pay the economically relevant costs of those elements (as determined in accordance with the pricing principles outlined above), thereby precluding "double recovery" of access costs.

That being said, NTIA's understands that interstate access charges are currently used, in part, to generate subsidies to preserve and advance universal service. We recognize, therefore, that allowing carriers to purchase unbundled network elements at relevant cost (and in lieu of access charges) may adversely affect universal service goals, at least in the period between adoption of interconnection and unbundling rules and the establishment of new mechanisms for funding universal service.

Because of NTIA's strong commitment to the preservation and advancement of universal service, we would urge the Commission to adopt an interim solution whereunder carriers that use unbundled network elements to originate and terminate long distance traffic would pay, in addition to the relevant costs of those elements, a "transition charge" designed to recover those portion of access charges that fund universal service programs, as mandated by the Act. This approach is consistent with the Act's requirement that all interstate telecommunications service providers contribute to the support of universal service. It also addresses the ILECs' concern that existing universal service support may be eroded in the period between adoption of interconnection and unbundling rules and the creation of new universal service funding mechanisms.

As NTIA noted in our reply comments, the Commission's decisions in this proceeding will determine, to a large degree, whether the nation realizes Congress' goal of a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans." An aggressive pricing policy for interconnection and unbundled network elements is essential to meet that objective. NTIA appreciates the complexity of the Commission's task and the sensitivity that the agency has demonstrated in addressing the universal service concerns that arise in this context. By adopting the foregoing recommendations, the Commission will both safeguard universal service and ensure that the benefits of competition -- lower prices and greater choices -- will quickly reach American consumers.

Sincerely,



Larry Irving

cc: Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness